INDIA

In 1998, the U.S. trade deficit with India was $4.7 billion, an increase of $975 million from the U.S. trade deficit of $3.7 billion in 1997. U.S. merchandise exports to India were $3.6 billion, an increase of $71 million (2.0 percent) from the level of U.S. exports to India in 1997. India was the United States' 33rd largest export market in 1998. U.S. imports from India were $8.2 billion in 1998, an increase of $904 million (12.3 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in India in 1997 was $1.7 billion, an increase of 24.5 percent from the level of U.S. FDI in 1995. U.S. FDI in India is concentrated largely in the banking, manufacturing and financial service sectors, but a substantial portion of new investment approvals are in infrastructure sectors.

IMPORT POLICIES

In June 1991, the then newly-elected government recognized that India's budget deficit, balance of payments problems, and structural imbalances would require re-evaluation of past economic policies and structural adjustment assistance from international financial institutions. As part of economic reform, the Indian Government has taken steps towards a more open and transparent trade regime, leading to a significant increase in Indo-U.S. trade and investment. With substantial additional liberalization, U.S.-India trade could become quite significant.

India's import licensing restrictions on approximately one-quarter of its imports and high tariffs remain serious impediments to U.S. exports, especially agricultural and consumer items. The United States continues to raise and discuss India's restrictive trade practices in all trade-related meetings with Indian officials, in dispute settlement proceeding of the World Trade Organization (WTO), and in regular bilateral consultations.

Tariffs

The Indian Government maintains a ceiling tariff rate (with a few exceptions) of 40 percent. Since the 1998/99 budget, a special additional duty of 4 percent was imposed on all imports except for imports by exporters and trading houses. Extra duties of 2 percent and 3 percent imposed since 1997 were removed in February 1999 in the 1999/2000 budget. However, under the 99/00 budget, customs duty rates of 10percent, 20 percent, and 30 percent were replaced by higher rates of 5 percent, 15 percent, 25 percent, and 35 percent, respectively, unbound zero-rated goods now face a 5 percent tariff and most items were assessed an additional 10 percent surcharge on the basic customs duty. Thus, for example, a 5 percent duty would be assessed at 5.5 percent, and a 35 percent duty would be assessed at 38.5 percent.

In the recent past, India has selectively lowered tariffs on some capital goods and semi-manufactured inputs to help Indian manufacturers**.** They have steadily reduced the import weighted tariff from 87 percent to the 1997/98 level of 23 percent. This does not include the additional 4 percent duty assessed in June 1998. For the first time since the start of economic liberalization in 1991, the Government of India's budget of 1998/99 failed to reduce the maximum and imported weighted average of tariffs. Despite reforms, Indian tariffs are still among the highest in the world, especially for goods that can be produced domestically. Most agricultural products face trade barriers which severely restrict or, in the case of processed foods, prohibit their import. Many consumer goods are similarly restricted.

India maintains a variety of additional charges on imports, allegedly the equivalent of domestic taxes on local goods (the so-called countervailing duties), further raising the cost of imports as they enter the stream of domestic commerce. For example, the increased cost of imported soda ash is estimated to be 66 percent, including a basic tariff rate of 30 percent with additional countervailing duties, special customs duty, and special additional duty. Industry reports that countervailing duties and infrastructure taxes for sugar, gum, and chocolate confectionary range from 59-70 percent. High effective rates also affect chocolate and confectionery products (78 percent). raisins (140 percent); mayonnaise (63 percent), and peanut butter (40 percent); appliances (30-78 percent); and toys and sporting goods (35 percent). Exorbitant effective rates of 253 percent are assessed on distilled spirits imports and 110 percent on still and sparkling wines, plus additional duties of $0.25 per liter for wines. U.S. producers also allege that the 40 percent excise tax on carbonated soft drinks represents a de facto discriminatory government policy because the carbonated soft drink market is supplied predominantly by foreign invested producers.

Progress made thus far in tariff reduction has helped U.S. producers, but further reductions of basic tariff rates and elimination of additional duties would benefit a wide range of U.S. exports. For example, the tariff on almonds is calculated at 55 rupees per kilogram for in shell almonds. The market potential, were the tariff removed, is estimated at up to $100 million by 2005. The United States has asked for a change to a specific (per kilogram) duty on pistachios, where under invoicing by competing suppliers creates unfair competition and limits U.S. market access. Other industries that might benefit from reduced tariff rates include (actual, pre FY99/00 budget, basic tariff rates in parenthesis) fertilizers (0-30 percent); wood products (0-30 percent); agricultural chemicals (35 percent); jewelry (40 percent); precious metal findings (65 percent); soda ash (30 percent); camera components (25 percent tariff, additional countervailing duty of 15 percent and extra duty of 9 percent); instant print film (10 percent); paper and paper board (30 percent); paper and paper board (generally 40%); ferrous waste and scrap (30 percent); computers, office machinery, and spares (0-40 percent); motorcycles, completely built up (CBU) motor vehicles, completely knocked down (CKD) and semi-knocked down (SKD) motor vehicle kits, and automotive parts and components (40 percent); large motorcycles (75 percent); air conditioners and refrigeration equipment (40 percent); heavy equipment spares (20-40 percent); medical equipment components (20 percent); copper waste and scrap (30 percent); hand tools (25 percent); soft drinks (40 percent); cling peaches (40 percent); canned peaches and fruit cocktails (40 percent); citrus fruits (42 percent); sweet cherries (40 percent); vegetable juice (40 percent); processed potato products (40 percent); almonds (55 rs/kg for in shell, 100 rs/kg for shelled); still and sparkling wines (100 percent); distilled spirits (275 percent); carbonated soft drinks (40 percent); corn oil (30 percent); peanut butter (53 percent); pistachios (45 percent); salad dressing (40 percent) and canned soup (40 percent).

In the Uruguay Round, India undertook a two-tiered offer on industrial products, binding tariffs on items in excess of 40 percent at a rate of 40 percent and binding items with tariffs below 40 percent at 25 percent. Some industrial goods (e.g., automobiles) and all consumer products were excluded from India's offer. As a consequence, India's scope of bindings on industrial goods will increase substantially, from 12 percent of imports to 68 percent once all reductions are implemented . The majority of these bindings exceed current Indian applied rates of duty. In agriculture, Uruguay Round tariff bindings are higher than actual rates in important sectors, ranging from 100 to 300 percent.

As a result of Uruguay Round commitments under the Agreement on Textiles and Clothing, India and the United States concluded successful bilateral textile negotiations, giving the United States significant tariff reductions on all categories of textile products. India committed to reduce and bind its tariffs over a period of seven years, with some of these reductions to have been implemented no later than the entry into force of the WTO. By January 1, 2000, Indian tariffs are to be reduced to levels no higher than 20 percent for fibers and yarns, 25 percent for industrial fabrics, 35 percent for home furnishings; and 35 to 40 percent for apparel. These reduced tariffs are to be applied on a most-favored-nation (MFN) basis. Current tariffs plus additional duties result in effective protection for most textile and apparel products of 50-88.5 percent, which is above current WTO bindings.

Import Licensing

In addition to high tariff rates, U.S. industries must deal with India's import licensing regime. The regime has been liberalized, but still limits market access for U.S. goods which would be competitive in a more open trading environment. Importation of "consumer goods" is virtually banned with a few exceptions such as for some imports under special import licenses (SIL), which are import permits that carry export performance requirements and are traded in the market for a variable premium.. Consumer goods are defined very broadly as goods that can directly satisfy human needs without further processing. As a result, products of agricultural or animal origin must be licensed and are therefore, with few exceptions, effectively banned. Since India maintains a restrictive licensing regime wherein no licenses are granted, the system acts as a virtual ban on imports that are licensed in this fashion. U.S. industry reports that products that are granted SILs, like frozen french fries, face restrictive development activities or limited market penetration. Importers of theatrical films must obtain a certificate from the Central Board of Film Certification, stating that the film is suitable for import according to guidelines laid down by the government. U.S. industry maintains that this constitutes a pre-censorship "quality check" obstacle. In addition, the Indian Government imposes a requirement to pay a fee for certification. A special import license is required for vehicle knock-down kit imports after a manufacturer signs a Memorandum of Understanding (MOU) with the Director General of Foreign Trade, covering plans on investment, capacity, local content, value of CKD imports and export earnings. Some commodity imports must be channeled (“canalized”) through public sector companies, although many “canalized” items have been fully or partially decontrolled recently. Currently, the main “canalized” items are petroleum products, bulk agricultural products (such as grains), and certain pharmaceutical products.

India's import policy is administered by means of a negative list. The negative list is divided into three categories: (1) banned or prohibited items (tallow, fat, and oils of animal origin); (2) restricted items which require an import license, including all consumer goods (as defined in the "tariffs" section above), such as instant print cameras, distilled spirits, canned soup, canned peaches and fruit cocktails, vegetable juice, seeds, potatoes and processed potato products, distilled spirits, plants, animals, insecticides, pesticides, electronic items and components, chemicals and pharmaceuticals, and a wide variety of other items; and (3) “canalized” items importable only by government trading monopolies (bulk agricultural commodities) and subject to cabinet approval regarding timing and quantity.

India’s restriction on access for most consumer products (via the non-automatic licensing scheme) has increased concern for U.S. industries. According to company representatives, India’s high tariffs and exclusive licensing system have undercut potential sales of goods. Examples of U.S. goods (estimated annual sales potential in parenthesis) affected by India’s restrictive barriers are the following: fruit cocktails and canned peaches (between $500,000 to $2 million); grapefruits (less than $5 million); table grapes ($5-$10 million); sweet cherries (less than $5 million); large motorcycles ($5 million); still and sparkling wines ($5 million); potato products (less than $5 million), and distilled spirits ($41,000).

In October 1995, the Indian Government published for the first time a correlation between its negative list of import restrictions and India's harmonized tariff schedule (HTS) import classification scheme. This document, entitled "Export and Import Policy Aligned on an ITC (HS) Classification" was intended to instill a degree of transparency, consistency, and clarity to the importation of goods into India.

India has liberalized many restrictions on the importation of capital goods. The importation of all second-hand capital goods by actual users is permitted without license, provided the goods have a residual life of five years. In March 1993, India abolished the two-tiered exchange rate regime, moving to a single market-determined exchange rate for trade transactions and inward remittances. The rupee is convertible on current account transactions, with indicative limits remaining on foreign exchange for travel and tourism. Capital account transactions for foreign investors, both portfolio and direct, are fully convertible. However, Indian firms and individuals remain subject to capital account restrictions.

India has committed to remove many apparel, fabric, and yarn imports from the restricted licensing list as a result of the United States - India Market Access Agreement for Textiles and Clothing of January 1, 1995. India agreed to provide immediate “unrestricted” access for fibers, yarns, and industrial fabrics. Similar “unrestricted” access for apparel fabrics, home furnishings, and clothing will be provided as soon as India lifts its import licensing previously justified under GATT Article XVIII:B, or no later than January 1, 2000, for home furnishings and apparel fabrics; and January 1, 2002, for most apparel and other made-up textile items. Removal of these licensing restrictions will be on a most-favored-nation (MFN) basis.

Balance of Payments Justification for Restrictive Import Licensing

India has claimed that its quantitative restrictions (QRS) on approximately 25 percent of its tariff lines are justified on balance of payments (BOP) grounds under GATT 1994 article XVIII:B. India has invoked these justifications for over fifty years. These represent significant barriers to doing business in India and removal of balance of payments restrictions would represent a significant liberalization of the Indian economy, affecting a wide range of U.S. industries. Information about the strength of India’s currency reserve position presented at the WTO Balance of Payments Committee meeting with India in June 1997 laid the foundation for India's removal of quantitative restrictions on over 2,700 consumer and agricultural products justified under GATT article XVIII:B. However, in light of India’s reserve situation, a six year phase out plan presented by India in October 1997 was unacceptable to the United States. Thus, at the request of the U.S., a WTO dispute settlement panel was established in November 1997 to resolve the issue. The panel’s final report is expected to be publicly available in late March, 1999. The United States continues to assert that these Indian restrictions are clearly WTO-inconsistent and not justifiable on balance of payments grounds. In April 1999 India reduced by over 300 the number of products subject to quantitative restrictions.

Customs Procedures

In December 1998, the Government of India fixed a minimum import price for certain imported steel products. According to press reports, these prices were fixed for imported hot-rolled steel coils, cold rolled steel coils, hot-rolled sheets, tin-plates, electrical sheets, and alloy steel bars and rods. Under the India minimum reference price valuation regime, importations of, for example, hot-rolled steel coils is allowed only if the minimum c.i.f. customs value is $302 per ton. The U.S. Government is reviewing this action with regard to its consistency with India’s obligations under the WTO Agreement on Customs Valuation.

The opening of India's trade regime has reduced tariff levels but it has not eased some of the worst aspects of customs procedures. Documentation requirements, including ex-factory bills of sale, are extensive and delays frequent. There have also been private sector reports of misclassification and incorrect valuation of goods for the purposes of duty assessment, in addition to corruption. The Indian Customs Service would also benefit from a significant streamlining of its procedures for moving products from the border into the stream of domestic commerce.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Indian standards generally follow international norms and do not constitute a significant barrier to trade. Requirements established under India's food safety laws are often outdated or more stringent than international norms, but enforcement has been weak. Opponents of foreign investment have tried to apply these laws selectively to U.S. firms (e.g., KFC), however these attempts have not withstood judicial scrutiny. Where differences exist, India is seeking to harmonize national standards with international norms. No distinctions are made between imported and domestically produced goods, except in the case of some bulk grains. Excessively restrictive plant protection rules have been introduced on soybeans and wheat. A return to more reasonable measures is being discussed by Indian and American agricultural officials.

Sanitary and Phytosanitary (SPS) Restrictions

India applies a range of SPS measures which have not been demonstrated as based on science and therefore, do not conform to international standards or the WTO SPS Agreement. India's SPS requirements are restrictive and lack transparency. For example, many of India's proposed quarantine pests are already present in India, while others do not pose a significant level of risk. These requirements are a major hindrance to U.S. agricultural exports to India, particularly for wheat and soybeans. More specifically, industry reports that there is a dispute with the Indian Government over the presence of *Tilletia controversa* Kuhn (TCK) in bulk export grains and oilseed shipments.

GOVERNMENT PROCUREMENT

Indian Government procurement practices and procedures are neither transparent nor standardized, and discriminate against foreign suppliers, but they are improving under the influence of fiscal stringency. Specific price and quality preferences for local suppliers were largely abolished in June 1992, and recipients of preferential treatment are now supposedly limited to the small-scale industrial and handicrafts sectors, which represent a very small share of total government procurement. Despite the easing of policy requirements to discriminate, local suppliers are favored in most contracts where their prices and quality are acceptable. Reports persist that government-owned companies cash performance bonds of foreign companies even when there has been no dispute over performance.

A second area of discrimination affecting U.S. suppliers is the prohibition of defense procurement through agents. Most U.S. firms do not have enough business in India to justify the high cost of resident representation. Some major government entities routinely use foreign bids to pressure domestic producers to lower their prices, permitting the local bidder to resubmit tenders when a foreign contractor has underbid them. For just one large project (e.g., power projects), this could cost U.S. contractors hundreds of millions of dollars in lost opportunities.

When foreign financing is involved, principal government agencies tend to follow multilateral development bank requirements for international tenders. However, in other purchases, current procurement practices usually result in discrimination against foreign suppliers when goods or services of comparable quality and price are available locally.

EXPORT SUBSIDIES

Export earnings are exempt from income and trade taxes, and exporters may enjoy a variety of tariff incentives and promotional import licensing schemes, some of which carry export requirements. Export promotion measures include duty exemptions or concessional tariffs on raw material and capital inputs, and access to special import licenses for restricted inputs. These subsidies have caused concern for U.S. industries particularly the agrochemical sector. According to industry representatives, since no corporate taxes are levied on income generated from exports by Indian companies, this enables them to price goods below international competitive levels while maintaining a constant profit margin. Commercial banks also provide export financing on concessional items.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Based on past practices, India was identified in April 1991 as a "priority foreign country" under the "Special 301" provision of the 1988 Trade Act, and a Section 301 investigation was initiated on May 26, 1991. In February 1992, following a nine-month investigation under "Special 301," the USTR determined that India's denial of adequate and effective intellectual property protection was unreasonable and burdens or restricts U.S. commerce, especially in the area of patent protection. India does not have a bilateral patent agreement with the United States.

In April 1992, the President suspended duty-free privileges under the Generalized System of Preferences (GSP) for $60 million in trade from India. This suspension applied principally to pharmaceuticals, chemicals, and related products. Benefits on certain chemicals, added to GSP in June 1992, were withheld from India, increasing the trade for which GSP is suspended to approximately $80 million. Significant revisions to India's copyright law in May 1994 led to the downgrading of India as "priority foreign country" to the "priority watch list," a designation under which India has remained since 1995.

Patents

India's patent protection is weak and has especially adverse effects on U.S. pharmaceutical and chemical firms. U.S. pharmaceutical multinationals estimate current annual losses in India due to the lack of patent protection for pharmaceutical products at approximately $500 million. India's patent act prohibits patents for any invention intended for use or capable of being used as a food, medicine, or drug, or relating to substances prepared or produced by chemical processes. Many U.S.-invented drugs are widely reproduced in India since product patent protection is not available. U.S. agrochemical industries have joined other industries' concern with respect to India's inadequate intellectual property protection. As a result, industries have withheld marketing and production of produce compounds in India. Estimated export sales loss, as a result, range from $5-25 million.

Under existing law, processes for making such substances are patentable, but the patent term for these processes is limited to the shorter of five years from patent grant or seven years from patent application filing. This is usually less than the time needed to obtain regulatory approval to market the product.

Where available, product patents expire 14 years from the date of patent filing. Stringent compulsory licensing provisions have the potential to render patent protection virtually meaningless, and broad "licenses of right" apply automatically to food and drug patents. India also fails to protect biotechnological inventions, methods of agriculture and horticulture, and processes for treatment of humans, animals, or plants. Indian policy guidelines normally limit recurring royalty payments, including patent licensing payments, to 8 percent of the selling price (net of certain taxes and purchases). Royalties and lump sum payments are taxed at a 30 percent rate.

Many of these barriers must be removed as India undertakes its Uruguay Round obligations on Trade- Related Aspects of Intellectual Property Rights (TRIPs). The Indian Government has announced its intention to conform fully to the IPR-related requirements of the Uruguay Round. As a first step, the government promulgated in late 1994 a temporary ordinance and introduced in early 1995 patent legislation consistent with India's TRIPs obligations relating to the "mailbox" provisions. The patents bill failed to pass in the upper house of Parliament in 1995, leaving India in violation of this TRIPs provision since early-1995, when the patent ordinance expired. In November 1996, the WTO Dispute Settlement Body established a panel at the request of the United States to review India's failure to meet these TRIPs obligations. The final panel report on this case was issued in August 1997, and ruled that India had failed to meet its obligations under the TRIPs agreement. Following an appeal by India, the WTO's appellate body ruled in favor of the United States in December 1997.

Patent legislation designed to meet India's TRIPs obligations was introduced and passed in the Upper House of Parliament in December 1998. Indian officials have pledged that the legislation will be passed by the Lower House in the parliamentary session beginning in February, 1999 in advance of the April, 19, 1999 deadline established by the WTO dispute settlement process. Meanwhile, a temporary ordinance bringing the amended patent law into effect was promulgated on January 8, 1999. The United States requested and in February 1999 held consultations with India on the grounds that the new legislation fails to meet TRIPs requirements.

Aside from failing to meet its immediate obligations, the Indian Government has announced its intention to take full advantage of the transition period permitted developing countries under TRIPs before implementing full patent protection. The United States continues to press for passage of the "mail box"-related legislation and to urge more accelerated implementation of the TRIPs patent provisions. A small, but growing, domestic constituency, made up of some Indian pharmaceutical companies, technology firms and educational/research institutions, favors an improved patent regime, including full product patent protection. India's decision in August 1998 to join the Paris Convention and the Patent Cooperation Treaty, which took effect in December, is a sign of improved IPR protection.

Copyrights

Under pressure from its own domestic industry, India implemented a strengthened copyright law in May 1995, placing it on par with international standards for copyright protection. However, piracy of copyrighted materials, (particularly popular fiction works and certain textbooks) , remains a problem for U.S. and Indian producers. Video, record, tape, and software piracy are also widespread, but enforcement has improved. Indian copyright law has undergone a series of changes over the last 10 years to provide stronger remedies against piracy and to protect computer software. In 1994, Parliament passed a comprehensive amendment to the 1957 Copyright Act. India's law now provides: rental rights for video cassettes; protection for works transmitted by satellite, cable, or another means of simultaneous communication; collective administration of rights; and limiting judicial discretion with respect to the level of penalties imposed on copyright pirates. However, there is no statutory presumption of copyright ownership and the defendant's "actual knowledge" of infringement must be proven.

Indian copyright law offers strong protection, but the Indian Constitution gives enforcement responsibility to the state governments. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizures authority, while the formation of appellate boards has speeded prosecution. The new law also provides for new minimum criminal penalties, including a mandatory minimum jail term, that U.S. industry believes will go far in controlling piracy, if implemented. Other steps to improve copyright enforcement include: the establishment of a copyright enforcement advisory council, including a judiciary commissioner, with responsibility for policy development and coordination; the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws; and the compilation of data on copyright offenses on a nationwide basis to assist in enforcement and application of penalties. However, because of backlogs in the court system and documentary and other procedural requirements, few cases have been prosecuted recently. While a significant number of police raids have been planned and executed, the law requires that in order to seize allegedly infringing equipment, the police must witness its use in an infringing act.

Cable piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India at this time. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated video cassettes as source materials. This widespread copyright infringement has a significant detrimental effect on all motion picture market segments -- theatrical, home video and television -- in India. For instance, pirated videos are available in major cities before their local theatrical release. Industry representatives estimate annual losses to the U.S. motion picture industry due to audiovisual piracy in 1998 to be $66 million. A bill to regulate the cable industry was submitted to parliament in 1993, but has been sent back to the Ministry of Information for revision with no further progress in this area since that time. Annual losses by U.S. motion picture industries due to India's import authorization policies and remittance restrictions are estimated to be $5-$10 million.

Trademarks

The Government of India has committed to upgrading its trademark regime, including according national treatment for the use of trademarks owned by foreign proprietors, providing statutory protection of service marks, and clarifying the conditions under which the cancellation of a mark due to non-use is justified. In May 1995, the Government of India introduced in Parliament a trademark bill that passed the lower house. However, opposition in the upper house of Parliament stalled discussion of the legislation, which is still pending. Passage of the trademark bill is expected in 1999.

Protection of foreign marks in India is still difficult, although enforcement is improving. Guidelines for foreign joint ventures have prohibited the use of "foreign" trademarks on goods produced for the domestic market (although several well-known U.S. firms were authorized in October 1991 to use their own brand names). The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) has routinely been refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Regulation Act (FERA) restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

In an infringement suit, trademark owners must prove they have used their mark to avoid a counterclaim for registration cancellation due to non-use. Such proof can be difficult, given India's policy of discouraging foreign trademark use. Companies denied the right to import and sell products in India are often unable to demonstrate use of registered trademarks through local sale. Consequently, trademarks on restricted foreign goods are exposed to the risk of cancellation for non-use.

No protection is available for service marks. Trademarks for several single ingredient drugs cannot be registered. There have been several cases where unauthorized Indian firms have used U.S. trademarks for marketing Indian goods. However, the Indian courts have recently upheld trademark owner rights in infringement cases.

SERVICES BARRIERS

Indian Government entities run many major service industries either partially or entirely. However, both foreign and domestic private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is growing awareness of India's potential as a major services exporter and increasing demand for a more open services market.

U.S. motion pictures industries have expressed concern with the proposed Broadcast bill of January 1997, which would increase limitations on broadcasting. According to industry representatives, the bill contains several protectionist provisions which act to limit foreign interests in local broadcasting including a 20 percent equity cap on foreign investment. The draft bill would establish a regulatory framework for direct -to-home (DTH) services, including satellite and cable television programming, and replace the existing Cable Act of 1995. The bill is currently pending review by the Parliament.

Insurance

All insurance companies are government-owned, except for a number of private sector firms which provide reinsurance brokerage services. Foreign insurance companies have no direct access to the domestic insurance market except for surplus lines, some reinsurance, and some marine cargo insurance. A government-appointed committee recommended in 1994 that the insurance sector be opened up to private sector competition, both domestic and foreign. In December 1996, the Finance Minister introduced the Insurance Regulatory Authority (IRA) bill in Parliament. The bill was withdrawn by the government in August 1997, and was reintroduced in Parliament in December, 1998. The bill has been referred to the Parliamentary Standing Committee on Finance for further discussions. In the WTO Financial Services Negotiations that concluded in December 1997, India bound the limited range of insurance lines currently open to foreign participation. In addition, India committed to most-favored-nation (MFN) status effective January 1999 for all financial services sectors, dropping a previous MFN exemption. U.S. industry believes that while they are excluded from the Indian insurance market, they are losing $5-25 million dollars a year in premium revenue.

Banking

Most Indian banks are government-owned and entry of foreign banks remains highly regulated. The Reserve Bank of India issued in January 1993 guidelines under which new private sector banks may be established. Approval has been granted for operation of 25 new foreign banks or bank branches since June 1993. Foreign bank branches and representative offices are permitted based upon reciprocity and India's estimated or perceived need for financial services. As a result, access for foreign banks has traditionally been quite limited. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including tight limitations on their ability to add sub-branches. Operating ratios are determined based on the foreign branch's local capital, rather than global capital of the parent institution.

India’s WTO Financial Services offer provides for a greater role for foreign banks starting on January, 1999. Foreign banks would be allowed to open twelve new branches annually (up from the present commitment of 8 per year). In addition, foreign financial services companies, including banks, would be allowed to provide equity venture capital in India, up to 51 percent of a company’s total equity. However, India did not agree to grant national treatment to foreign companies investing in the financial services sector, nor did it make any commitments on cross-border banking.

Securities

Foreign securities firms have established majority-owned joint ventures in India. Through registered brokers, foreign institutional investors (FII), such as foreign pension funds, mutual funds, and investment trusts, are permitted to invest in Indian primary and secondary markets. However, FII holdings of issued capital in individual firms are limited; total aggregate holdings by FIIs cannot exceed 24 percent of issued capital (the limit can be raised to 30 percent with the approval of the Board of Directors of the company concerned), and holdings by a single FII are limited to 10 percent of issued capital. Foreign securities firms may now purchase seats on major Indian stock exchanges, subject to the approval of a regulatory authority. In the 1998/99 Budget, FII investments were allowed for the first time in the debt securities of unlisted Indian companies. Prior clearance from the Reserve Bank of India is no longer required for Indian companies for inward remittance of foreign exchange and for the issuance of shares to foreign investors.

Motion Pictures

In the past, restrictions imposed on the motion picture industry were quite burdensome, costing an estimated $80-300 million according to industry estimates. The United States pressed for removal of these restrictions, and received commitments from the Government of India in February 1992 that addressed most industry concerns. Beginning in August 1992, the Indian Government began implementation of its commitments, introducing a number of significant changes in film import policy. The Government of India has carried out its commitments in good faith.

However, some issues of concern remain. For example, the pre-censorship "quality check" procedures entail fees, and some Indian states apply high entertainment taxes, amounting to 100 percent of the price of admittance in certain cases. High taxes not only constitute a significant disincentive to much needed construction of cinemas and theaters in India, but impede free and open trade. U.S. industry emphasizes that the pre-censorship certification is in itself a form of censorship. U.S. companies have also experienced difficulty in importing film/video publicity materials. More significant, however, are concerns regarding the $6 million annual ceiling applied to remittances by all foreign film producers for balance-of-payments reasons. In addition, India has continued to use a 1956 cabinet resolution to bar any foreign ownership of the media, preventing the approval even of joint ventures. U.S. industry reports that the Ministry of information is working on broadcast policies which continues the restrictions of the 1956 Cable Act. An example of these proposed policies is the limitation on foreign equity to 20 percent in the broadcast industry. Industry further alleges that Indian states continue to apply high entertainment taxes to box office admissions, some amounting ti more than 100 percent of the admission price.

Accounting

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India, if their home countries provide reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they are comprised of the names of proprietors or partners, or a name already in use in India. This limitation applies to all but the two U.S. accounting firms that were established prior to the imposition of this rule. Effective July 1, 1998, the Institute of Chartered Accountants of India (ICAI) banned the use of logos of accounting firms. Financial auditing services may only be provided by firms established as a partnership. However, foreign accountants may not be equity partners.

Construction, Architecture and Engineering

Many construction projects are offered only on a non-convertible rupee payment basis. Only projects financed by international development agencies permit payments in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Foreign firms may only participate through joint ventures with Indian firms.

Legal Services

Foreign lawyers are not allowed to practice law in India's courts. To qualify to practice in India, a candidate must obtain a law degree from an Indian university. Moreover, India applies a reciprocity requirement in allowing foreign lawyers to practice in its courts to be enrolled as advocates in India. The Indian Bar Council has imposed restrictions on the activities of foreign law firms in recent years that have sharply curtailed U.S. participation in the Indian legal services market.

Telecommunications

India has taken partial steps toward introducing private investment and competition in the supply of basic telecommunications services. However, licensing delays, based in part on uncertainties regarding fees and interconnection charges new entrants must pay, caps on the number of licenses per bidder, alleged irregularities in the tendering process, India's weak multilateral commitments in basic telecom, and the strong influence the government-owned service provider has heretofore exerted over telecom policy have limited the value of the liberalizing steps taken so far.

The national telecommunications policy announced in 1994 allows private participation in the provision of cellular as well as basic and value-added telephone services. Foreign equity in value-added services is limited to 51 percent. For cellular and basic services, the limit is 49 percent. However, as it has been difficult to raise the amounts of money need to finance the new networks, creative financing arrangements have been allowed in some cases that exceed the formal limit. Private operators can provide services within regional "circles" that roughly correspond to India's states. These operators currently are not permitted to offer domestic long distance or international services significantly restricting the market their networks could serve. The policy limits changes in partners for existing joint ventures, reducing the value of existing foreign investment. Delays in awarding and issuing licenses for both cellular and basic service, as well as the imposition of new rules, limits and restrictions, particularly for basic services, have slowed progress and created an environment that is likely to inhibit rapid growth in India's telecommunications infrastructure. Local production requirements remain an important factor in negotiations to establish service operations.

The government established an independent regulatory authority, the Telecom Regulatory Authority of India (TRAI), to oversee the implementation of the telecom policy in 1997. The powers of the TRAI have been drastically curbed in recent months as the Department of Telecommunication continues to display its reluctance to accept the authority of the TRAI. U.S. industry reports that over the past year TRAI has encountered several defeats in India's court system. A new telecom policy is scheduled to be released in March, 1999.

In the WTO Agreement on basic telecommunications services, India made commitments that did not address the progressive liberalization of its market but generally reflected the status quo. It adopted some pro-competitive regulatory principles, but did not set a date certain to open up additional segments of its telecom services market on an unrestricted basis. India's WTO schedule does not guarantee resale and takes a step back by committing only to a 25 percent foreign investment stake in basic telecom. India did not make any market access commitments regarding satellite services. India mandated the GSM standard for cellular services and took an MFN exemption for accounting rates. India's government-owned corporations, MTNL and VSNL, are the monopoly providers of domestic long distance and international service respectively. India has stated that it will review its policy on domestic long distance in 1999 and international long distance in 2004. U.S. industry does report that there have been improvements in India's market over the past year. For example, India created the National Task Force on Information Technology and Software Development. Appointed last year, the Task Force has drafted India's National Informatics Policy, which was responsible for the collapse of the Internet Service Provider (ISP) monopoly, previously held by Vinesh Sanchar Nigasm Limited (VSNL). On November 7, 1998, competitors to VSNL were granted license to operate ISPs. Competition in this market will generate lower prices for consumers and increased opportunity for U.S. equipment suppliers. In addition, India is offering special tax incentives for information technology industries, like software development and more favorable depreciation rates for IT equipment, which indicate India is taking the importance of its high-tech industries more seriously.

Access to India’s market for Global Mobile Personal Communications Systems (GMPCS) services will be determined by the policy the Government of India develops on treatment and licensing of GMPCS systems. These satellite-delivered services will allow subscribers to communicate with callers anywhere in the world using a cellular-like phone, and will serve an important role in providing telecommunications services in infrastructure-poor rural areas. The policy will determine how many GMPCS providers will be able to offer these services in India. The U.S. Government is encouraging India to adopt a competitive approach and license all GMPCS providers interested in serving India. A variety of providers in the market will encourage competition and lower prices.

India has recently been working on legislation that would regulate aspects of the broadcasting industry. The draft broadcasting bill is intended to regulate all television and radio delivery services: terrestrial broadcast television, cable services, and satellite (including direct-to-home, or DTH) services. A recent version of the bill would restrict foreign equity investment to 20 percent, require local incorporation, require local uplink of satellite signals, and require local licensing of programs and channels. The bill is also likely to contain cross-media ownership restrictions, spectrum auctions, and program standards. As such, the bill will have a negative impact on the commercial development of India’s satellite and cable industries and the ability of foreign companies to access the Indian market, both for delivery of communications services and for program access.

INVESTMENT BARRIERS

The new industrial policy announced in July 1991 marked a major shift, relaxing or eliminating many restrictions on investment and simplifying the investment approval process. However, many of these changes were instituted by executive orders and have not yet received legislative sanction through parliament. The United States and India still have not negotiated a bilateral investment treaty, although an updated agreement, covering operations of the Overseas Private Investment Corporation (OPIC), was signed in November 1997. The new agreement modernizes and replaces the arrangements that had governed OPIC operations since 1957. OPIC operations resumed in November 1998 following the temporary, partial lifting of sanctions imposed on India after its nuclear tests in May 1998.

Equity Restrictions

The complicated and burdensome Foreign Exchange Regulation Act has been amended to increase access for foreign investment in India. Automatic approval is granted by the Reserve Bank of India for equity investments of up to 51 percent in 35 industries. The Indian Government has also authorized existing foreign companies to increase equity holdings to 51 percent. In December 1996, the government announced that it would allow automatic approval by the Reserve Bank of India of equity investments of up to 74 percent in nine categories including mining services, electricity generation and transmission, and construction of roads, bridges, ports, harbors, and runways. All sectors of the Indian economy are now open to foreign investment, except those with security concerns, such as defense, railways, and atomic energy. Government approval is still necessary for majority foreign participation in the passenger car sector. Proposals for foreign equity participation exceeding 51 percent (74% in the case of nine industries) and projects considered to be “politically sensitive” are considered by the Foreign Investment Promotion Board (FIPB). Through 1994, the FIPB had approved almost all the requests made for higher foreign ownership and for other “exceptional” cases, but still reserved the right to deny requests for increased equity stakes. However, foreign firms report that increases in foreign equity, especially to 100 percent foreign ownership, have become more difficult to obtain since 1994.

Industries have expressed concern with the Indian Government's stringent and non-transparent regulations and procedures governing local share-holding. Current price control regulations have undermined incentives to increase equity holdings in India. Some companies report forced renegotiation of contracts in the power sector to accommodate government changes at the state and central levels. They report that this practice makes India an expensive, complicated, and frustrating environment in which to do business.

On November 25, India's Cabinet Committee on Economic Affairs (CCEA) approved and announced specific new rules applicable to all existing and new foreign auto investments in India. Under the new policy, new and existing joint venture companies seeking to import CKD and SKD kits and automotive components must sign a standardized memorandum of understanding (MOU) with the Government of India containing requirements regarding: $50 million minimum equity investment in joint ventures with majority foreign ownership; local content requirement including waiver of import license requirement when local content exceeds a certain threshold; export obligations; and foreign exchange balancing. Prior to this policy, auto manufacturing investors were required to conclude MOUs on a case-by-case basis. Concern has been expressed that the new policy may be violative of India's WTO Trade-Related Investment Measure (TRIMs) Agreement commitments in regard to both national treatment and the general elimination of quantitative restrictions as described in the illustrative list in the annex to the WTO TRIMs Agreement.

India has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content and "dividend balancing"requirements affecting pharmaceutical products and the economy in general. Proper notification allows developing-country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. India therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

Trade Restrictions

Though not an investment barrier per se, India's import restrictions and high tariffs have constrained investors from importing competitive inputs.

ANTICOMPETITIVE PRACTICES

As in any country, private and public firms will engage in a variety of anticompetitive practices to the extent they perceive their practices are in their interest and to the extent they can get away with them. One can find examples of both state-owned and private Indian firms engaging in most types of anticompetitive practices with little or no fear of reaction from government overseers or action from a clogged court system. India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively.

These practices are not viewed as major hindrances to the sale of U.S. products and services at this time. U.S. firms are more concerned with addressing such basic issues as market access, corruption, arbitrary or capricious behavior on the part of their partners or government agencies, and procurement discrimination from both public and private institutions.

ELECTRONIC COMMERCE

The Indian Government is currently developing a policy regarding electronic commerce. In order to develop electronic commerce, India will have to change the Indian Telegraphic Act of 1885 which does not allow encrypted information to be transmitted over telephone lines. In addition to amending this act, India also plans to make amendments to the Copyright Act of 1957 in order to make circumvention of technological measures like encryption an offense.

In November 1998, internet services were opened up to the private sector for the first time. Private operators can now set up gateways for international connectivity. Foreign equity of up to 49 percent is permitted, and there is no limit on the number of licenses to be issued in a given area.

OTHER BARRIERS

India has an unpublished policy that favors counter trade. The Indian Minerals and Metals Trading Corporation is the major counter trade body, although the State Trading Corporation also handles a small amount of counter trade. Private companies are encouraged to use counter trade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to counter trade. The exact nature of offsetting exports is unspecified as is the export destination. However, the Indian Government does try to eliminate the use of re-exports in counter trade.

India’s Drug Policy is an issue of concern for U.S. industries. The policy imposes a stringent price control regime which adversely affects U.S. companies from a commercial standpoint. There is no system allowing for automatic adjustment of prices to offset cost fluctuations. With the lack of effective intellectual property protection coupled with a rigid pricing system, U.S. industries face extreme obstacles to maintain viable businesses in India. Industries most significantly affected are pharmaceutical companies placing the best and latest innovative drugs out on the Indian market. Industry representatives have expressed interest in the Government of India proceeding to the adoption of free pricing measures.